

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SAMMAMISH HOMEOWNERS, a Washington non-profit corporation; THOMAS E HORNISH and SUZANNE J. HORNISH, TRUSTEES OF THE THOMAS E. HORNISH and SUZANNE J. HORNISH JOINT LIVING TRUST; TRACY and BARBARA NEIGHBORS; ARUL MENEZES and LUCRETIA VANDERWENDE; and HEBERT MOORE and EVELYN MOORE,

Plaintiffs,

vs.

KING COUNTY, a political subdivision of the State of Washington,

Defendant.

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No. 15-cv-00284 MJP
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)
DEFENDANT KING COUNTY'S
)
REPLY IN SUPPORT OF FRCP
)
12(b)(1) & (6) MOTION TO DISMISS
)
FOR LACK OF STANDING
)
)
NOTE ON MOTION CALENDAR:
April 17, 2015
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)

Regardless of the effort to add 57 additional plaintiffs and a new defendant via an amended complaint, the question remains whether the original five plaintiffs have standing to bring this action. Because the original five plaintiffs have failed in their burden to establish their standing, each should be dismissed from further participation in this lawsuit.

A. Plaintiffs' Bear the Burden to Establish Their Standing to Sue With Specific Allegations and Facts That Are Consistent With Their Deeds

DEFENDANT KING COUNTY'S REPLY IN SUPPORT
OF FRCP 12(b)(1) & (6) MOTION TO DISMISS
FOR LACK OF STANDING (15-cv-00284 MJP)- 1

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1 The five original plaintiffs do not dispute that they have the burden to establish their
 2 standing. Indeed, in opposing a motion to dismiss for lack of Article III standing, a plaintiff
 3 who has invoked federal jurisdiction bears the burden of demonstrating standing “through
 4 allegations of ‘specific facts plausibly explaining’ why the standing requirements are met.”

5 *Machlan v. Procter & Gamble Co.*, 14-CV-01982-JD, 2015 WL 106385, at *2 (N.D. Cal. Jan. 7,
 6 2015) (*quoting Barnum Timber Co. v. Envtl. Prot. Agency*, 633 F.3d 894, 899 (9th Cir.2011)).

7 Despite the opportunity to amend their complaint to plead specific facts establishing
 8 standing, the five original plaintiffs stand pat. They do not dispute that the deeds they attached
 9 to their complaint are part of the complaint. They do not dispute the abundant case law holding
 10 that a court is not required to accept conclusory legal allegations as true when contradicted by
 11 attachments to a complaint. They do not supplement the allegations in their complaint to assert a
 12 chain of title that would support the centerline presumption, nor do they assert other facts
 13 necessary to claim the benefit of Washington’s “centerline presumption” doctrine. Instead,
 14 Plaintiffs simply assert that they “will ultimately prove” that they own to the centerline, and that
 15 a “plausible” cause of action will do for the moment. Pl. Resp. 2 n.2, 3.

16 Because King County is challenging this Court’s jurisdiction to hear plaintiffs’ action,¹
 17 plaintiffs’ burden to establish their standing is more substantial than unspecified, conclusory
 18 allegations of “fee ownership.” When a defendant challenges the factual basis for the Court’s
 19 jurisdiction, a court is permitted to look beyond plaintiffs’ conclusory allegations:

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21 ¹ In a footnote, plaintiffs suggest that King County made the same motion to dismiss in *Kaseburg v. Port*

22 *of Seattle et al.* No. 2:14-CV-000784-JCC and that “Judge Coughenour has already denied the

23 Defendants’ Motion to Dismiss (Doc. 59).” Pl. Resp. at 2 n.1. Any such suggestion is false. Although King County brought a motion to dismiss in the *Kaseburg* matter, it did not address the standing issues raised in the current motion.

1 Plaintiffs have the burden of establishing standing. *See Thompson v. McCombe*, 99 F.3d
 2 352, 353 (9th Cir.1996) (“A party invoking the federal court's jurisdiction has the burden
 3 of proving the actual existence of subject matter jurisdiction”). A Rule 12(b)(1) motion to
 4 dismiss for lack of standing may attack the court's subject matter jurisdiction either
 5 facially or factually. *See White*, 227 F.3d at 1242. Here, the government contends that the
here, a Rule 12(b)(1) attack is factual, the court may look beyond the complaint to
matters of public record without having to convert the motion into one for summary
judgment. Id. The court also need not presume the truthfulness of a plaintiff's allegations.

6 *Kingman Reef Atoll Investments, L.L.C. v. U.S. Dep't of Interior*, 195 F. Supp. 2d 1178, 1183 (D.
 7 Haw. 2002)(emphasis added). Here, as a matter of law, plaintiffs own deeds refute application
 8 of the centerline presumption, thereby leaving plaintiffs without standing to bring this action.

9 **B. Plaintiffs' Have No Ownership Interest In the Corridor Under Washington's
 10 Centerline Presumption Doctrine**

11 Plaintiffs' do not dispute that their alleged ownership of the Corridor and their standing
 12 rests upon application of the centerline presumption. Because their deeds do not describe land
 13 within the Corridor, Plaintiffs admit (as they must) that their standing relies upon beneficial
 14 application of the centerline presumption. Pl. Resp. at 4. Application of this presumption to
 15 grant plaintiffs' ownership of the corridor remains legally impossible because: 1) they make no
 16 allegation establishing their chain of title back to the original grantor of the property, and 2) their
 17 deeds contain metes and bounds descriptions that expressly exclude the corridor.² *Roeder Co. v.*
Burlington Northern, Inc., 105 Wn.2d 567, 575-76 (1986).

18 Seeking to avoid the binding *Roeder* precedent, Plaintiffs claim that *Kershaw Sunnyside*
 19 *Ranches, Inc. v. Yakima Interurban Lines Ass'n*, 156 Wn. 2d 253, 273 (2006) is actually the
 20 controlling authority on centerline presumption issues. Pl. Resp. at 6-9. Not so. The *Kershaw*

22 ² A metes and bounds legal description carefully and explicitly describes the land conveyed by a deed.
 23 Such a description, that explicitly excludes an adjacent right of way, rebuts any presumption that the right
 of way was intended to be included in the conveyance.

1 case did not address the centerline presumption. It examined whether a 1960 quit claim deed
 2 from mother to son, which excepted the “right-of-way of the Northern Pacific Railway,” was
 3 ambiguous and analyzed the deed based on other evidence in the record clarifying the grantor’s
 4 intent.³ *Id.* at 26. The *Kershaw* decision did not address -- much less overrule -- *Roeder*’s
 5 holding that a metes and bounds description “rebuts the presumption that the grantee takes title
 6 to the center of the right of way.” 105 Wn.2d at 577.

7 In an apparent recognition that the centerline presumption does not favor their cause,
 8 plaintiffs’ attempt to insert Texas’ “strip and gore” doctrine⁴ into Washington law. Pl. Resp. at
 9 4. No Washington case has ever adopted “strip and gore.” Indeed, as plaintiffs’ response brief
 10 illustrates, the “strip and gore” doctrine is inconsistent with Washington law, especially the
 11 Washington Supreme Court’s decision in the *Roeder* case.

12 Even if this Court were to import “strip and gore” into Washington law, it does not
 13 establish plaintiffs’ standing. The “doctrine refers to the public policy rationale that disfavors
 14 ‘the conveyance of strips of land by fee simple titles to railroad companies for right-of-way
 15 purposes, either by deed or condemnation.’” *Blendu v. United States*, 79 Fed. Cl. 500, 507 n.7
 16 (Fed. Cl. 2007); *see also Estate of Smith v. Spinelli*, 216 P.3d 524, 533 (Alas. 2009); *Miller v.*
 17 *Crum*, 314 S.W.2d 389, 395 (Tex. App. 1958). The doctrine also addresses whether the original
 18 grantor intended to convey their underlying fee interest in a strip of land along with an adjoining
 19

20 ³ In their proposed Amended Complaint, plaintiffs make no allegations that similar evidence exists in the
 21 current case. They could not make such allegations because plaintiffs make no effort to plead their chains
 22 of title, nor is it likely that their properties were passed down generation-to-generation from the original
 23 grantor as in the *Kershaw* case.

4 The “strip and gore” doctrine has been primarily adopted in Texas. Courts in a few other jurisdictions
 have also recognized the doctrine as a presumption for deed interpretation.

1 parcel. *See Naumann v. Lee*, 2012 Tex. App. LEXIS 2756, at *12 (Tex. App. Apr. 5, 2012) (the
 2 doctrine “is a presumption that a deed conveys a small parcel of land omitted from the
 3 description of the land conveyed if the parcel (1) is small in comparison to the land conveyed, (2)
 4 is adjacent to or surrounded by the land conveyed, (3) belonged to the grantor at the time of the
 5 conveyance, and (4) was of no benefit or importance to the grantor....[and] applies only when
 6 there is ambiguity as to the land intended to be conveyed...”). None of the specific facts alleged
 7 by plaintiffs make this Texas doctrine relevant to the current case.

8 Similarly, plaintiffs also misstate the holding in *Beres v. United States*, 97 Fed. Cl. 757
 9 (Ct. Cl. 2011) . Pl Resp. at 8. Although the *Beres* court did hold that the railroad conveyances at
 10 issue there were easements – directly contrary to the express holdings of the Ninth Circuit Court
 11 of Appeals, the United States District Court for Western District and King County Superior
 12 Court⁵ – the *Beres* court did not apply the centerline presumption and did not reach the question
 13 of who owned the underlying fee interest. *Beres*, 97 Fed. Cl. at 765 n.17 & 809 (“At this time,
 14 the court does not reach a legal judgment as to the validity of the chain of title with respect to
 15 any of the plaintiffs’ properties.”). The *Beres* decision, therefore, has no relevance to plaintiffs’
 16 standing or King County’s motion to dismiss.

17 Despite plaintiffs’ efforts to confuse the issue, the centerline presumption is just that: a
 18 presumption. Like any presumption, it may be rebutted, as it is here by plaintiffs’ own metes and
 19

20 ⁵ In *King County v. Rasmussen*, 143 F. Supp. 2d 1225 (W.D. WA 2001), Judge Rothstein held as a matter
 21 of law that a source deed granted a fee interest to the railroad for certain properties along the eastern shore
 22 of Lake Sammamish, some of which are at issue in this litigation. This decision was affirmed by the 9th
 23 Circuit Court of Appeals. 299 F.3d 1077 (9th Cir. 2002). Where the railroad owned the right of way in
 fee, the centerline presumption cannot be invoked. As indicated in King County’s motion to dismiss and
 for purposes of this motion only, however, the County assumes the corridor adjacent to the plaintiffs’
 properties is held as an easement.

1 bounds property descriptions, which exclude the Corridor from plaintiffs' properties. Because
 2 plaintiffs have failed to supply their chains of title and/or allege specific facts that would support
 3 application of the centerline presumption *despite the language of their own deeds*, plaintiffs have
 4 failed in their burden to establish standing. Thus, as a matter of law, King County's motion to
 5 dismiss plaintiffs' complaint should be granted.

6 **C. The “Sammamish Homeowners” Organization Lacks standing**

7 As noted in King County's Motion to Dismiss, under *Hunt v. Washington State Apple*
 8 *Adver. Comm'n*, 432 U.S. 333, 343 (1977), associational standing is determined by a three-part
 9 test. KC Motion at 12-13 (dkt. 9). Plaintiff Sammamish Homeowners argues only that it meets
 10 the first *Hunt* criteria, while ignoring the second and third parts of the test. As such, the
 11 organization has failed in its burden to establish associational standing.

12 With regard to the first *Hunt* criteria – that the members would have standing to sue in
 13 their own right – Sammamish Homeowners fails to identify any of its members, much less a
 14 member with standing to sue. The proposed amended complaint does not address this problem,
 15 even though it was pointed out in King County's motion. KC Motion at 13-14. Without specific
 16 allegations on the first *Hunt* criteria, Sammamish Homeowners lacks Article III standing to
 17 proceed with this lawsuit. *E.g., Associated General Contractors of America, San Diego Chapter,*
 18 *Inc. v. California Dept. of Transp.*, 713 F.3d 1187, 1194 (9th Cir. 2013).

19 Sammamish Homeowners also makes no effort to explain its purpose or how this suit fits
 20 within its purpose as required for Article III standing under the second *Hunt* criteria. Its failure
 21 to address the second *Hunt* test also eliminates the organization's standing under Article III.

22 Finally, Sammamish Homeowners fails the third *Hunt* test, where an association lacks
 23 standing if “the claim asserted []or the relief requested requires the participation of individual

1 members in the lawsuit.” 432 U.S. at 333. Because the centerline presumption requires an
 2 individualized analysis of property rights, Sammamish Homeowners cannot recover without the
 3 participation of each of its members. As discussed, landowners must demonstrate chains of title
 4 back to the original grantor of the railroad right-of-way before they are entitled to apply the
 5 centerline presumption. *Roeder Co. v. Burlington N., Inc.*, 105 Wash. 2d 567, 716 P.2d 855
 6 (1986). “A property owner receives no interest in a railroad right of way simply through
 7 ownership of abutting land.” *Id.* at 862. Although Plaintiffs argue it is enough merely to
 8 reference proof of their current ownership (without other required “specific allegations”), that is
 9 contrary to the holding of the *Roeder* case. Other individualized aspects of proof in a quiet title
 10 and declaratory judgment action are addressed in King County’s motion and stand unrefuted by
 11 plaintiffs.⁶ See KC Motion at 13-14.

12 The Plaintiffs’ primary authority on associational standing, *United Food & Commercial*
 13 *Workers Union Local 751 v. Brown Grp., Inc.*, does not alter the requirements of Article III, or
 14 the analysis of *Hunt*. 517 U.S. 544, 548, 116 S. Ct. 1529, 1532 (1996). Although *Brown Group*,
 15 did allow a union to sue on behalf of its individual members, it was only because the Worker
 16 Adjustment and Retraining Notification Act contained language authorizing unions to file suit on
 17 behalf of affected members. *Id.* at 547. The statute itself said individual participation was not
 18 necessary to recover, so the union met the prudential standard set forth in the third *Hunt* test.
 19 Sammamish Homeowners does not—and cannot—point to any statute authorizing an association
 20 to enforce the centerline presumption on behalf of its members, nor would such a statute get
 21 them past the first two *Hunt* inquiries, which are constitutional requirements under Article III.

22 ⁶ Presumably, King County’s plans to construct a trail in the Corridor impact adjacent property owners
 23 differently. Individual property owners are required in order to litigate such claims.

The associational standing of the Sammamish Homeowners group is not a close question.

As such, the organization should be dismissed from this action for lack of standing.

DATED this 17th day of April, 2015 at Seattle, Washington.

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1 **DECLARATION OF FILING AND SERVICE**

2 I hereby certify that on April 17, 2015, I electronically filed the foregoing document(s)
3 with the Clerk of the Court using the CM/ECF system which will send notification of such filing
4 to the following:

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19 I declare under penalty of perjury under the laws of the United States and the State of
20 Washington that the foregoing is true and correct.

21 DATED this 17th day of April, 2015 at Seattle, Washington.

22 _____
23 *s/ Natalie Duran* _____
24 Natalie Duran
25 King County Prosecuting Attorney's Office

DEFENDANT KING COUNTY'S REPLY IN SUPPORT
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